

FREDERICK COUNTY PLANNING COMMISSION
Wednesday, January 18, 2006
Minutes

Commission Members Present: Alan Duke, Chairman
 Robert White, Vice Chairman
 Joseph Brown III, Secretary
 Fern Hines
 J. Denham Crum
 Michael Cady, BOCC Liaison

Commission Members Absent: Joan McIntyre

Planning Staff Present: Steven Kaii-Ziegler, Director of Planning
 Eric Soter, Assistant Director of Planning
 Jim Gugel, Chief Planner
 Janet Davis, Historic Preservation Planner
 Carole Larsen, Principal Planner II
 Tim Goodfellow, Principal Planner
 Caryl Wenger, Recording Secretary

Afternoon Session

Mr. Duke opened the meeting at 2:00 p.m.

MINUTES:

Mr. Brown made a motion to approve the minutes for November 16, 2005, December 14, 2005, and December 21, 2005. Mr. Crum seconded the motion. Motion carried.

Vote: 5 – 0 – 1 – 1
For: Duke, Brown, White, Crum, Cady
Against: None
Absent: McIntyre
Abstain: Hines

PLANNING COMMISSION COMMENTS:

Mr. Cady stated that a text amendment submitted by Land Stewards was denied at the BOCC meeting the previous night. A revised text amendment has been proposed, he said, it has received the conditional endorsement of the Board of Education, and a new text amendment will be filed and expedited mid-February. The new proposed text amendment includes \$65 million for schools to be built by Land

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Stewards, (the original proposal included only \$45 million), and it does not change the definition of adequacy as was originally proposed. Mr. Cady commended the Planning Commission on originally recommending “denial” of this text amendment, and stated that doing so has resulted in a much better text amendment.

WALKERSVILLE REGION PLAN UPDATE / REGIONAL PLAN PROCESS

Mr. Kaii-Ziegler asked that the Walkersville Region Plan Update and the Regional Plan Update be moved up in the day’s schedule so that he and Mr. Soter could attend another scheduled meeting.

Mr. Gugel stated that the bulk of the Walkersville Region Plan update for the day would center around the proposed “new plan process.” The hope is, he said, that this region plan can be completed before the November election. Considerable discussion about whether to split the Plan Process from the Rezoning Process followed. The general consensus was that the Region Plan revisions take entirely too long, and that a more streamlined process needs to be investigated.

Mr. Kaii-Ziegler stated that the Planning Staff has struggled mightily over the last few years because the planning process combines rezonings with the Plan preparation. Intertwining them, he said, “severely lengthens the time it should take to do the processes.” Separating out the rezoning component, he said, would allow for a Plan to be prepared without the influence of formal rezoning applications. He went on to say that there should then be a defined opportunity for landowners to apply for a rezoning of their property, and that it should be done in such a way that the Staff, the Planning Commission, and the Board of County Commissioners can evaluate the request for rezoning in relation to a Plan that has been recently adopted. It will not dramatically speed up the process, he said, but it should have some measurable improvement in efficiency.

Mr. Kaii-Ziegler stated that his staff researched Region Plan procedures adhered to in other Maryland counties, and found that Frederick County is unique in combining a Comprehensive Rezoning process with Plan preparation. No other Maryland county government that he is aware of combines these processes, he said.

If the Walkersville Plan process is done the old way, he stated that he and his staff do not believe that a Plan, (along with the rezoning process), will be completed in sufficient detail for the current Board to act on. Using the new version, it is his belief that a Plan could be finalized to a degree where the Board of County Commissioners could take action if they so chose. The new Plan would then become the basis for a new Board to evaluate the rezoning requests.

Mr. White stated that this made a great deal of sense to him, because the objective would be to create a good plan upon which rezonings could be based, as opposed to doing both flexibly at the same time.

Mr. Cady disagreed with the two-pronged concept because, he said, in the case of the New Market Region Plan, the new Plan would have been put in place, and it would not have addressed traffic issues that would have arisen once the rezoning requests came to light. He felt that the Plan would have had to be reopened and revised once again to incorporate the new traffic concerns.

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Mr. Duke stated that during the New Market Region Plan there were several discussions about traffic studies, and to his knowledge, they were never completed. Mr. Kaii-Ziegler stated that there were two privately funded traffic analyses that were expected. One came in during December, and the other came in recently. Mr. Duke's point was that, if these traffic analyses had come through when expected, much needed information on traffic issues would have been available for the New Market Region Plan.

Mr. Duke then asked whether the subsequent Region Plan would be begun in the interim between the Comprehensive Plan portion and the Rezoning portion, if the two-prong Region Plan process was adopted. Mr. Gugel stated that the next Region Plan process could, and would, get under way before the Region Plan currently being worked on was completed.

Though not usually permitted at a workshop, Mr. Duke decided to open the meeting for public comment.

Public Comment

Attorney Rand Weinberg stated that this is approximately the thirteenth region plan/zoning process he has participated in, and that they have gotten progressively more difficult. There is no question, he said, that something is broken, and that we need to come up with a better procedure, particularly for the four major growth regions in Frederick County. "We need some specific written guidelines and timelines," he said, "to get us through these processes." "I support some change in the process by the time we get back to Frederick and Adamstown," he said. "What I'd like to see discussed," he said "is the best way to get to a new procedure when we get back to Frederick, Adamstown, New Market and Urbana."

Mr. Duke commented that he would like to complete the Walkersville Region Plan process with the current Board. He stated that he would not be opposed if the new Board voted to change the process after Walkersville is complete.

Mr. White stated that he would be in favor of implementing the new process for the Walkersville Region.

Mr. Brown then made a motion to "draft a letter to the Board of County Commissioners and recommend for the Walkersville Region that we do not change the process; we go back to the old process with a major effort by Staff, and by us, to complete the Plan, not only by the Planning Commission, but hopefully that the Board of County Commissioners can schedule and complete the Walkersville Plan in this election year." Ms. Hines seconded the motion. Motion carried.

Vote: 4 – 1 – 1 – 1
For: Brown, Duke, Crum, Hines
Against: White
Absent: McIntyre
Abstain: Cady

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COUNTYWIDE COMPREHENSIVE PLAN TEXT AMENDMENT -- Incorporation of Heart of the Civil War Heritage Area Management Plan Public Hearing.

This item was a continuation from a previous Public Hearing held on December 21, 2005. Ms. Janet Davis, along with Ms. Liz Shatto, Coordinator of the Historic Sites Consortium in the Tourism Council for Frederick County, provided the Planning Commission with the information and revisions requested in the December meeting.

After some discussion, Mr. White made a motion to recommend adoption of the Heart of the Civil War Heritage Area Plan to the Board of County Commissioners, according to the Staff's recommendation, along with the three notes at the end of the recommendation. (Recommendation is attached hereto and made a part hereof.) Mr. Brown seconded the motion.

Vote: 4 – 1 – 1 – 1
For: Brown, Duke, White, Hines
Against: Crum
Absent: McIntyre
Abstain: Cady

WATER AND SEWERAGE PLAN AMENDMENTS – WINTER 2005 CYCLE

WS-05-29 – Ana's Place—Reclassification of 5.1554 acres, located at Yellow Springs Road & Old Seventh Street, Clover Hill, City of Frederick, from W-5Dev. to W-3Dev.

Ms. Larsen presented the Staff Report and recommended a finding of consistency with the Comprehensive Plan.

Applicant

The Attorney for the Applicant stated that he and his client agreed with the Staff's report.

Public Comment

None

Decision

Mr. White made a motion to recommend consistency with the Comprehensive Plan to the Board of County Commissioners. Mr. Brown seconded the motion. Motion carried.

Vote: 4 – 0 – 2 – 1
For: Brown, Crum, Duke, White
Against: None
Absent: Hines, McIntyre
Abstain: Cady

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WS-05-30 – Frederick County Public Schools/Oakdale HS—Reclassification of 48.058 Acres, located west side of Eaglehead Drive, north of Old National Pike, From W-4Dev./S-4Dev. to W-3Dev./S-3Dev.

Ms. Larsen presented the Staff Report and recommended a finding of consistency with the Comprehensive Plan.

Applicant

Beth Passierb, of Frederick County Public Schools, stated that she had nothing to add, except to request a Finding of Consistency for this request.

Public Comment

None.

Decision

Mr. Brown made a motion to recommend consistency with the Comprehensive Plan to the Board of County Commissioners. Mr. White seconded the motion. Motion carried.

Vote: 4 – 0 – 2 – 1
For: Brown, Crum, Duke, White
Against: None
Absent: Hines, McIntyre
Abstain: Cady

WS-05-31 -- City of Frederick/Monocacy WTP – located on North Market Street near MD 26. Text amendment to relocate the Zenon treatment facility from Fredericktowne and River Walk Park. to that location and expand the treated water from that location to 4 MGD.

Ms. Larsen presented the Staff Report and recommended a finding of consistency with the Comprehensive Plan and the Frederick Region Plan.

Applicant

Paul Lee, City Engineer, stated that this facility is temporarily in the Riverwalk Park floodplain. The previous administration promised the Riverwalk residents that it would be relocated as soon as practical to remove it from the park facility. “This request is an effort to honor that commitment, he said.”

Public Comment

None.

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Decision

Mr. White made a motion to recommend consistency for the Map and Text Amendment to the Comprehensive Plan and the Frederick Region Plan. Mr. Brown seconded the motion. Motion carried.

Vote: 4 – 0 – 2 – 1
For: Brown, Crum, Duke, White
Against: None
Absent: Hines, McIntyre
Abstain: Cady

ANNEXATION

Zeltman Property -- Town of Mt. Airy – Annexation of 163 acres located on the southwest side of Old Bohn Road, currently designated “Agriculture” on the County’s Comprehensive Plan, to be rezoned R-2 Residential upon incorporation into the town.

Mr. Goodfellow gave an overview of the proposed annexation, and stated that even though this rezoning is inconsistent with the Comprehensive Plan, Staff recommends that a waiver of zoning consistency be granted, and that the Planning Commission recommend the same to the Board of County Commissioners.

Applicant

Attorney Krista McGowan spoke on behalf of the applicants in this case. On January 9th, she said, the Board of County Commissioners voted to include this property within the Mt Airy growth limits for future annexation. She asked that the Planning Commission recommend a waiver zoning consistency to the Board of County Commissioners.

Public Comment

Ms. Beth Passierb, with Frederick County Schools, asked whether a school site would be included in the annexation. Mr. Cady confirmed that a floating school symbol for a middle school and an elementary school would be placed on the Comprehensive Plan map. Mr. Goodfellow stated that a park is also planned.

Mr. Chris Jakubiak, Consulting Town Planner for the Town of Mount Airy, stated that it is the town’s understanding that a 55-acre parcel of land would be dedicated for a school campus. He further stated that Mt. Airy’s Planning Commission reviewed the annexation, determined that it conformed with the town’s Master Plan, and recommended to the town Council that the parcel be annexed into the town with R-2 zoning.

Rebuttal

Ms. McGowan confirmed Mr. Jakubiak’s comments, but stated that she believes these issues have no bearing on the consistency of the annexation

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Decision

Mr. White made a motion to find the Zeltman annexation inconsistent with the 1993 version of the New Market Region Plan, but recommended a waiver of inconsistency. Mr. Crum seconded the motion. Motion carried.

Vote: 4 – 1 – 1 – 0 – 1
For: Crum, Duke, White, Cady
Against: Hines
Absent: McIntyre
Abstain: None
Recused: Brown

The Afternoon Session ended at 3:50 p.m.

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The Evening Session began at 7:00 p.m.

Commission Members Present: Alan Duke, Chairman
Robert White, Vice Chairman
J. Denham Crum
Fern Hines
Michael Cady, BOCC Liaison

Commission Members Absent: Joseph Brown III
Joan McIntyre

Planning Staff Present: Steve Kaii-Ziegler, Director of Planning
Eric Soter, Assistant Director of Planning
Larry Smith, Zoning Administrator
Mark Depo, Development Review Planning Director
Mike Wilkins, Principal Planner I
Michael Chomel, County Attorney
Kathy Mitchell, County Attorney
Caryl Wenger, Recording Secretary

ZONING TEXT AMENDMENT – (ZT-05-08) – Public Hearing

Mike Vesper & Shirley Vesper – Requesting amendment to the Zoning Ordinance to change the specific requirements for Child Care Center or Nursery Schools.

The Applicants' Attorney asked that the matter be continued for thirty days. After some discussion, Mr. White made a motion to continue the matter for up to thirty (30) days. Mr. Crum seconded the motion. Motion carried.

Vote: 4 – 1 – 2 – 0
For: Duke, White, Hines, Crum
Against: Cady
Absent: Brown, McIntyre
Abstain: None

ZONING TEXT AMENDMENT – (ZT-05-09) – Public Hearing

Tyler Companies, Inc. – Requesting an amendment to the Zoning Ordinance to allow for a Transit Oriented Development District (TOD) floating zone to be established for the purpose of providing for the development and/or redevelopment of land located within seventy-five feet of a MARC Train Station.

After considerable discussion, the request was withdrawn by Applicant's Attorney.

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ADEQUATE PUBLIC FACILITIES TEXT AMENDMENT – (AT-05-05) – Public Hearing

Weinberg & Miller, L.L.C. and Miles & Stockbridge, P.C. – Requesting an amendment to the Adequate Public Facilities Ordinance to allow for Cluster Developments to be exempt from the school adequacy requirements.

This item was continued for the purpose of hearing additional testimony.

Applicant

Attorney Rand Weinberg summarized the proposed text amendment and stated that originally, it was intended to apply to the “cluster provisions” set forth under the Agricultural, Resource Conservation, and Residential zoning classifications. It was later modified to apply only to the Agricultural clusters. The object of the agricultural cluster provision, he said, is to efficiently utilize agricultural land, while giving the agricultural landowner the opportunity to utilize his development rights.

Attorney Krista McGowan, co-applicant, stated that this text amendment would not result in any additional homes or lots currently permitted under the provisions of the Adequate Public Facilities Ordinance. This would help the property owners, she said, and it “encourages the continued use of agricultural land for productive agricultural purposes, rather than eating it up with lots.” She urged the recommendation of approval to the Board of County Commissioners.

Public Comment

One member of the community, a local realtor, spoke in favor of this text amendment.

Another member of the community stated that she was not necessarily against the text amendment, but that local PTAs have concerns.

A third speaker, a local farmer, stated that Frederick County needs to start taking a look at what farmers want, which is to be able to develop a portion of their land and use the remainder for agriculture. He asked that this be kept in mind when making a decision on the request.

Rebuttal

Rand Weinberg stated that once the Ag Cluster is completed and the development rights have been exercised, the remainder must be kept in “Agricultural” use, and a sentence stating that “the land lies within an approved cluster development and no further subdivision of the designated parcel is permitted unless the property is rezoned or other ordinance are passed” must be placed on the Plat.

Legal

County Attorney, Kathy Mitchell, stated that, because of the significant changes made to this Text Amendment, she was under the impression that it would be withdrawn and resubmitted. Changing text amendments in midstream violates several procedural issues, she said. It has not been published, it has not been sent to the municipalities, and it has not gone through the procedural steps. People need to be able to comment on the actual text amendment being considered. Any decision made at this meeting, she said, should be on the original text amendment.

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Mr. White stated that he was under the impression that the Planning Commission could send the request forward to the Board of County Commissioners with a recommendation of denial, but with an additional recommendation that the text amendment might be acceptable with changes. Ms. Mitchell agreed that that could be done, but, she said, "if the Applicant wants to put this revised amendment in as a substitute for the original amendment, then we've got to start over." APFO is a big hot button with the community, she said, and it would be her advice to go through each and every procedural step. "It's subject to legal challenge if we don't," she said.

Rebuttal

Procedure is important, Mr. Weinberg said, but "we don't know what the procedure is." We've been doing these text amendments, zoning ordinances, and APFOs for years, and it's all changed within the last month. We need to get together, he said, and "figure out what is going to require us to start over and what's not." He went on to say that his proposed changes required less of an amendment, and for that reason, he didn't feel it necessary to start over.

Decision

After considerable discussion, Ms. Hines moved for a denial of the Applicant's original text amendment request, first heard by the FcPc and continued on November 16, 2005. Mr. White seconded the motion. With the vote being 2 – 2, with one abstention, the matter moved forward to the Board of County Commissioners with no recommendation.

Vote: 2 – 2 – 2 – 1
For: Hines, White
Against: Duke, Crum,
Absent: McIntyre, Brown
Abstain: Cady

The meeting ended at 9:16 p.m.

Respectfully submitted,

Caryl J. Wenger, Recording Secretary

Alan E. Duke, Chairman

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SUGGESTED TEXT
FCPC RECOMMENDATION TO BOCC RE
HEART OF THE CIVIL WAR HERITAGE AREA
MANAGEMENT PLAN
JAN. 18, 2006

The Frederick County Planning Commission recommends the Board of County Commissioners of Frederick County take the following actions regarding the Heart of the Civil War Heritage Area Management Plan, which has been proposed for incorporation by reference in the Frederick County Comprehensive Plan:

- 1) Authorize the Heart of the Civil War Heritage Area Steering Committee to submit the Management Plan to the Maryland Heritage Areas Authority for Certification; and,
- 2) Upon approval of the Management Plan and Certification by the Maryland Heritage Areas Authority, amend the Frederick County Comprehensive Plan to incorporate the Management Plan by reference. Such reference will occur at the following locations in the Comprehensive Plan:
 - A. Vol. 1, Chapter 3, page 3-36, Historical and Archaeological Resources Policies, No. 5, deleting the final sentence, which reads: "The Maryland Heritage Areas Program will be pursued with regard to these heritage tourism resources.", and substituting the following sentence: *"The Heart of the Civil War Heritage Area Management Plan is incorporated herein by reference for those portions of the Management Plan that apply to Frederick County."*
 - B. Vol. 1, Chapter 4, page 4-47, Heritage Area Policies, No. 4, deleting the existing text, which reads: "In cooperation with participating municipalities and the County's State Delegation, the County shall nominate designated Frederick County Heritage Areas for inclusion in the Maryland Heritage Areas Program.", and substituting the same text as recommended in section A above.
- 3) Include the following statements as part of the Board's resolution:

The Management Plan, if adopted by participating jurisdictions and approved by the Maryland Heritage Areas Authority for Certification, does not in any way affect, impair or abridge the rights of the property owner. The boundaries of the Heritage Area as depicted in the Heart of the Civil War Heritage Area map are for purposes only of the Heritage Area program and do not alter, amend or vary any existing local zoning or land use regulations.

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